Supreme Court, U.S.
JUL 29 1971

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-143

BRYAN W. STEVENS, BARBARA STEVENS, STANLEY SAPIRO and MARION SAPIRO,
Petitioners and Appellants,
vs.
PHILIP E. WATSON,
Defendant and Respondent.

PETITION FOR WRIT OF CERTIORARI

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Defendant and Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

The Petition of Bryan W. Stevens, Barbara Stevens, Stanley Sapiro, and Marion Sapiro for a writ of certiorari to review a judgment of the Court of Appeal, Second Appellate District, Division Five, State of California, made and filed by said Court on the 13th day of April, 1971, a copy of which is appended to the original hereof, respectfully shows to this honorable court:

OPINIONS OF THE COURT BELOW

Petitioner's Copy of the Opinion of the Court of Appeal is attached to the original of this Petition as Appendix I. Said opinion is officially reported as *Stevens v. Watson,* 16 Cal. App. 3rd 629. (R-)

A petition was filed for hearing by the Supreme Court of the State of California, which hearing was denied; said denial being communicated on a postcard dated June 9, 1971, stating merely "hearing denied." (R-)

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The date of the judgment sought to be reviewed and the date of its filing by the Court of Appeal was April 13, 1971. An order denying the Petition for Hearing in the California Supreme Court was filed on June 9, 1971. A remittitur was issued by the District Court and filed with the Superior Court of the State of California for the County of Los Angeles on June 14, 1971.

This case involves an interpretation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. It is here contended, among other things, that Article XIII, #2.6 of the California Constitution which grants an enormous tax exemption to private, "nonprofit" golf courses which discriminate as to membership on racial, religious, financial, occupational and social grounds, but which

denies such tax exemption to golf courses operated for profit which are open to the entire public without discrimination, violates the Fourteenth Amendment.

STATUTORY JURISDICTION FOR REVIEW

The statutory provision conferring jurisdiction upon the court to review the judgment of the court below is United States Code, Title 28, Section 1257 (2) and (3).

CONSTITUTIONAL PROVISIONS INVOLVED HEREIN

AMENDMENT XIV: " * * * (N)or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF PROCEEDINGS

December 1, 1969. Petitioners filed their Petition for Writ of Mandamus and Declaratory Relief and Points and Authorities.

December 19, 1969. Petitioners filed their Notice of Motion for Issuance of Peremptory Writ of Mandamus, Points and Authorities and Declaration of Stanley Sapiro.

February 18, 1970. Respondent Philip Watson, Assessor of the County of Los Angeles, filed his Demurrer and Points and Authorities.

March 3, 1970. Minute Order of Superior Court filed, sustaining demurrer without leave to amend.

March 3, 1970. Order of Dismissal filed.

March 30, 1970. Notice of Appeal and Notice to Prepare Clerk's Transcript filed.

April 2, 1970. Notice to Clerk for Inclusion of Additional Papers in Record on Appeal filed.

April 13, 1970. Judgment of Court of Appeal affirming judgment filed.

June 9, 1971. Order filed by California Supreme Court denying hearing filed.

June 14, 1971. Remittur issued by the Court of Appeal, Second Appellate District, filed in Los Angeles County Superior Court.

QUESTIONS PRESENTED

1. Does Article XIII, Section 2.6 of the California Constitution, which grants a tremendous property tax exemption privilege to private "non-profit" golf clubs, which have strict entrance requirements based on race, religion, nation of birth, occupation, income and social standing, but excludes from said tax privileges golf courses operated for profit which are open to everyone, regardless of their racial, religious, social and financial status, constitute a state "involvement" in such discriminatory entrance requirements, contrary to the equal protection clause of the Fourteenth Amendment?

2. Is the discrimination made in Article XIII, Section 2.6 against golf courses open to the public, without racial, religious and other restrictions, in itself a violation of the Equal protection clause?

3. Leaving aside the religious and racial and other arbitrary discrimination involved, is the granting of the extensive tax exception to private golf courses in itself a violation of the equal protection clause as to other taxpayers equally situated?

4. Is the provision in Article XIII, Section 2.6 which limits its tax privileges to golf courses already in operation for two years a violation of the equal protection clause of the 14th Amendment?

INTRODUCTORY STATEMENT

On November 8, 1960 by Initiative, Article XIII, Section 2.6 was added to the California Constitution. It reads:

> "Sec. 2.6. In assessing real property consisting of one parcel of 10 acres or more and used exclusively for nonprofit golf purposes for at least two successive years prior to the assessment, the assessor shall consider no factor other than those relative to such use. He may, however, take into consideration the existence of any mines, minerals and quarries in the property, including, but not limited to oil, gas and other hydrocarbon substances."

The extent of this tax privilege cannot be argued,

the Respondent, who is Assessor of Los Angeles County, having stated in a motion picture criticizing the tax privilege, that the privileged golf courses are only assessed at 3.5% of market value, whereas surrounding property is assessed at 25% of market value!

For years, both before and after the enactment of Section 2.6, "nonprofit" golf courses have conducted notorious racial and religious discrimination. This discrimination has been common knowledge, but has been exempted from public criticism because of the great financial, political and social power of the members of these clubs. But this discrimination has remained a constant thorn in the side of all minority groups, and all knowledgeable persons who lack the privileges of birth, wallet and social graces of the favored few, but must pay greater taxes themselves to make up for the sizeable loss of revenue.

The Court of Appeal's Opinion claimed that such tax privileges were justified under the Supreme Court's opinion in *Walz v. New York City Tax Com.*, 397 U.S. 664, wherein this Court held that tax exemptions to churches did not violate the 1st Amendment of the Constitution, although the 14th Amendment was not an issue in that case.

In addition to comparing tax privileges to bigoted golf courses to granting tax privileges to churches, the Court of Appeal also held that the 14th Amendment was made inapplicable by the fact that the voters could conceivably have believed the arguments made

by the proponents of the measure. Those arguments were made in a multi-million dollar high-pressure campaign in which the voters were promised relief from smog and other non-existing ecological delights. (During the hearing of the argument the Presiding Judge of the Court of Appeal referred to the campaign for the Amendment as a "swindle"—a dramatic but accurate description.)

The Court of Appeal also held that the 14th Amendment was also circumvented by "State Policy," because *six* (6) *years after* section 2.6 was passed another constitutional amendment was adopted in California, which also gave tax privileges to various land speculators and special interests.

As will be shown, every argument made by the Court of Appeal was contrary to established law as established by repeated decisions of this Court.

FACTS AND ARGUMENTS RELIED UPON FOR THE ALLOWANCE OF THIS PETITION.

A. SUMMARY OF THE PLEADINGS SUMMARY OF THE COMPLAINT

Petitioners filed a Petition for Writ of Mandamus and Declaratory Relief against Respondents Philip E. Watson, Assessor of the County of Los Angeles, State of California and Does I through XXX, on December 1, 1969, in the Superior Court of the State of California for the County of Los Angeles. (R-) The Complaint alleged that the Doe defendants were all golf

clubs owning and operating "nonprofit" golf courses in Los Angeles County eligible for special tax treatment under Article XIII, Section 2.5 of the California Constitution, whose names and identities were known to Respondent Watson, but which he refused to divulge after demand was made.

Petitioners alleged in their first cause of action that they sued on their own behalf as property owners and taxpayers, and on behalf of all other property owners in the County of Los Angeles not members of nonprofit golf courses.

Petitioners further alleged in their first cause of action:

1) By virtue of Article XIII, Section 2.5 Respondent Watson was assessing the Doe defendants' golf courses not at their true market value, or at their highest and best use, but at an artificial and spurious basis, at only a small fraction of their true value.

2) The golf courses of Does I through XXX were on extremely valuable land, invaluable due to the extreme shortage of usable residential, commercial and industrial land. This land was also suitable for much-needed recreational land, especially that needed by children, minority races, and low and middle income groups throughout the County.

3) The golf courses receiving the benefits of Article XIII, Section 2.6 are all private organizations which have strict requirements for entrance, based on arbitrary and capricious limitations as to race, reli-

gion, nation of birth, occupation, income and social graces of applicants. Most of the said golf clubs do not allow Negroes, Mexicans, Jews, Syrians, Orientals, Armenians, Greeks, Turks, and other persons not of Anglo-Saxon heritage to be members, or greatly limit their membership therein, while other clubs have almost exclusively Jewish membership. That prior to his election to the U.S. Senate Mr. George Murphy was denied membership to one of said tax privileged golf clubs on the grounds that he was an actor by occupation.

4) Plaintiffs are not members of or eligible for membership into said golf clubs due to lack of proper financial, occupational and social status, but plaintiffs and all other non-members must pay higher property taxes to make up the deficit caused by the special tax status given said golf clubs.

5) Said tax exemption was discriminatory against new golf courses, in that they had to pay a much higher tax than existing golf courses for at least two years. It was also discriminatory as applied to golf courses under 10 acres, including pitch-and-putt courses.

6) Said tax exemption was discriminatory as not being applicable to golf courses operated for profit which allow all persons, regardless of race, creed, color, bank account, social status, occupation or table manners to membership, which golf courses must pay substantially higher taxes than the favored golf courses, which compete with them for patronage.

7) Written demand was made on Respondent Watson that he ignore the provisions of Article 13, Section 2.6, on the grounds that it violated the 14th Amendment to the U.S. Constitution. Respondent Watson ignored the demand and refused to comply therewith. Plaintiffs have no remedy at law, no administrative remedy and would suffer great and irreparable injury unless Mandamus was granted.

The Second Cause of Action alleged that Petitioners Sapiro were of Jewish extraction, and therefore not eligible for membership in the majority of non-profit golf courses; but were only racially eligible for membership "in certain purportedly separate but equal non-profit golf courses where non-Jewish members are either prohibited or are very limited as to membership."

The Third Cause of Action sought declaratory relief, involving the contentions that Article 13, section 2.6 was violative of the 14th Amendment of the United States Constitution, and denied petitioners and all persons similarly situated equal protection and uniform operation of the law, and was violative of the constitutional right of all persons to carry only the same burden of taxation as other taxpayers and to have their property similarly assessed, and involved an unreasonable, capricious and arbitrary classification, contrary to public policy and the 14th Amendment.

SUMMARY OF THE DEMURRER

Respondent Watson demurred to the complaint on the grounds that it did not state facts sufficient to constitute a cause of and asserted that: (1) Petitioners have no standing to maintain the action; (2) The Court should deny relief because of petitoners' "delay in asserting their claims;" (3) Article 13, Section 2.6 "is not so palpably arbitrary and irrational" as to offend the equal protection clause; (4) Article 13, section 2.6 was clear and certain and not violative of due process of law. (R-)

JUDGMENT OF THE LOWER COURT

The lower court sustained the demurrer without leave to amend, holding:

> "While it appears to the court that Petitioners do have standing to sue and are not barred by laches, no significant state action in the constitutional sense prohibits this constitutional provision." (R-)

No oral testimony was heard, no exhibits introduced, and no Reporter's transcript prepared.

OPINION OF THE COURT OF APPEAL

The Court of Appeal sustained the judgment of the lower court, in a decision cited in 16 Cal. App. 3rd 629 (R-) as *Stevens et al v. Watson.*

The Court of Appeal held as follows:

1) Classifications are proper "if any conceivable

facts could justify them," citing (or mis-citing) *McGowan v. Maryland,* 366 U.S. 420, 6 L. Ed. 2d 393.

2) Section 2.6 is part of a State policy "toward discouraging premature development of urban and near urban land and toward encouraging the preservation of open spaces," citing a separate portion of the Constitution enacted 6 years *after* Article 13, section 2.6 was enacted, (article 28, section 1) and which refers to encouragement of land available for agricultural purposes.

3) The arguments given in the ballot arguments relative to aiding in "decontamination of the air and assist in air pollution control," etc. etc. could be considered in determining if any "conceivable state of facts" could support the legislative classification, even though the law under attack was "not vague or uncertain."

4) The 14th Amendment was not applicable, because it applies only "where the state had delegated to private groups extraordinary powers to perform functions bearing a close relation to sovereignty."

5) Since the State of California does not participate in the operation of the favored golf courses, it "cannot fairly be charged with any responsibility for the private conduct of such golf courses," and therefore the 14th amendment was inapplicable.

6) Because of this Court's decision in *Walz v. Tax Commission,* 397 U.S. 664, 25 L. Ed. 2d 697, holding that the 1st Amendment was not violated by tax ex-

emption to churches, "it follows that a tax exemption such as the one here under consideration does not involve the state in the private conduct of the property owner benefitted by such exemption under the more general proscription of the equal protection clause."

7) Such cases as *Mayflower Farms v. Ten Eyck,* 297 U.S. 266, 80 L. Ed. 675, holding that the 14th amendment is violated by laws granting privileges not available to firms new in the field, do not apply to article 13, section 2.6, because "it was conceivable that such restriction would assure a degree of permanence of such courses and would tend to discourage the use of the section as a temporary tax advantage."

B. ARGUMENT

I.

THE TAX FAVORITISM TO BIGOTED GOLF COURSES CONSTITUTES A SIGNIFICANT STATE INVOLVEMENT IN THE DISCRIMINATION SHOWN.

It would seem so obvious as to require no argument that an extraordinary property tax exemption (requiring about 15% of the normal tax burden) granted only to private clubs which practice vicious racial, religious, financial and social discriminations, but which is denied to golf clubs open to all comers, constitutes a state involvement in the discriminations. In fact it seems an evident truism.

The Court of Appeals has sought to evade this evident conclusion by a judicial declaration wholly without legal precedent or rational basis.

Forging new legal policy, the Court of Appeal asserts:

> "The high standards of conduct imposed by the Fourteenth Amendment are applicable to nominally private activities only where the State has delegated to private groups extraordinary powers to perform functions bearing a close relationship to sovereignty."

The United States Supreme Court has made no such limitation and its decisions go far beyond the tightly limited scope contended for by the Court of Appeal.

In *Griffin v. County School Board,* 377 U.S. 218, 12 L. Ed. 2d, 256, the Supreme Court held that prohibited state involvement existed where tax exemptions were given to private schools including those open only to whites. In *Burton v. Wilmington Parking Authority,* 365 U.S. 705, 6 L. Ed. 2d 45, it was held that leasing of State property to a tenant who excluded Negroes involved the State in an invidious discrimination. In *Reitman v. Mulkey,* 387 U.S. 369, 18 L. Ed. 2d 830, repeal of a state law forbidding racial discrimination in selling private housing was held to violate the Fourteenth Amendment. In *Robinson v. Florida,* 378 U.S. 244, 11 L. Ed. 2d 771, forbidden state involvement was held imposed where an additional burden was placed on private institutions which did not discriminate (as in the case at bar). In *Griffin v. Maryland,* 378 U.S. 130, the Supreme Court held that because affording police protection would be state in-

volvement, government-paid peace officers could not arrest trespassers in a privately owned and operated amusement park which indulged in racial discrimination. In none of these cases was any function even approximating "sovereignty" involved.

Other Federal Courts have followed the Supreme Court's lead in applying the Equal Protection Clause to an infinite variety of cases where there is even indirect and remote assistance by the State to discrimatory organizations. *Wimbish v. Pinellas County* (1956), 342 Fed. 2d 804, 805, held that illegal State involvement existed where a golf course leased from a county by a private party forbad Negroes the use thereof. And see *Seidenbourg v. McSorely's Old Ale House, Inc.* (12-9-69), 308 Fed. Supp. 1253, 1256-1257, where state regulation of the liquor industry was held sufficient to require Equal Protection enforcement as to a privately owned bar.

In all of the above cases the State unsuccessfully claimed that nowhere did it encourage the private persons involved to practice discrimination, and that the State's position was strictly a neutral one.

In *Reitman v. Mulkey, supra,* 387, U.S. 369, 378-380, 18 L. Ed. 2d 830, 836-838, the Supreme Court demolished similar claims made that Proposition 14 nowhere placed the State on the side of racial discrimination, that the State was not financially or otherwise involved, and that only a "neutral" position was taken. The Court held:

> "This Court has never attempted the 'impossible task' of formulating an infallible test for determining whether the State 'in any of its manifestations' has become significantly involved in private discriminations. 'Only by sifting facts and weighing circumstances' on a case-by-case basis can a 'non-obvious involvement of the State in private conduct be attributed to its true significance.' *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 722, 6 L. Ed. 2d 45, 81 S. Ct. 856."

The Court then reviewed various cases including *Burton v. Wilmington Parking Authority, supra,* where "the State neither commanded nor expressly authorized or encouraged the discriminations," and then concluded:

> "None of these cases squarely controls the case we have before us. But they do illustrate the range of situations in which discriminatory state action has been identified. They do exemplify the necessity for a court to assess the potential impact of official action in determining whether the State has significantly involved itself with invidious discrimination."

Does anybody really believe that there is no state involvement in this tremendous tax subsidy which is given to the bigoted private clubs, but withheld from those clubs which are sufficiently American to allow all comers, regardless of race, religion or color?

The involvement is much greater here than in *Griffin v. County School Board, supra,* where tax exemp-

tions were not withheld from those private schools which were open to all. It is certainly greater than in *Burton v. Wilmington Parking Authority, supra,* and *Wimbish v. Pinellas County, supra,* where the discriminatory tenants of the restaurants and golf courses respectively involved received no special tax bonus from the State. It is obviously greater than in *Reitman v. Mulkey, supra,* where no tax privileges were given to homeowners who refuse to sell to racially disfavored persons. It is greater than in *Robinson v. Florida, supra,* where establishments catering to all races only had to install separate plumbing facilities, but had no greater tax burden. It is greater than in *Seidenbourg v. McSorely's Old Ale House, Inc., supra,* where the only state involvement was uniform regulation of the liquor industry. And it certainly exceeds the state involvement in *Griffin v. Maryland, supra,* where all that the State did was to supply a Deputy Sheriff to enforce a trespass law which applied equally to everyone.

Respondent stated in his brief that petitioners "do not claim" that Section 2.6 encourages private discrimination. This is completely untrue. Petitioners contend that stripped of their extraordinary tax favors they now enjoy our bigoted clubs would be compelled by financial necessity, or at least encouraged, to open their doors to the Blacks, Mexicans, Jews, Slavs, Latins, and other races whom Herr Hitler once felt, and the favored golf course operators now feel, to be inherently inferior. They might even open their doors to persons involved in inferior occupations.

Petitioners do not seek to compel, by judicial fiat, the private golf courses to open their ranks to these supposedly inferior individuals. Perhaps the discriminating tax favorites would be able to withstand the burden of paying taxes similar to those paid by every other taxpayer without changing their membership polices. But at least we would be spared the disgusting spectacle of the State imposing a tax subsidy to assist the continuance of the bigoted practices.

II.

THE DISCRIMINATION IN FAVOR OF THE DISCRIMINATING PRIVATE GOLF CLUBS AND AGAINST GOLF CLUBS OPEN TO ALL PERSONS VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT.

In *Robinson v. Florida* (1963), U.S. 153, 156, 12 L. Ed. 2d 771, it was held that the 14th Amendment was violated by an illegal state involvement consisting of an administrative regulation which required that separate facilities be provided in each restaurant for each race employed or served therein.

In the case at bar a much more serious financial burden is placed on the democratically run golf clubs in the form of much heavier property taxes. The inherent injustice and capricious character of this discrimination is self-evident.

The Court of Appeal based its opinion in large part on the legally unique argument that it was bound by the arguments made to the voters in the election

campaign. But every one of these specious arguments about eliminating smog, providing recreation, and encouraging tourists is just as applicable to the courses open to the general public. In fact it is obvious that recreation and tourism are much more encouraged by golf courses on which all persons (including tourists) may play, than golf courses open only to the established few.

As stated in *McLaughlin v. Florida,* 379 U.S. 184, 1980, 13 L. Ed. 2d 222, "Classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any just basis.' Ibid. 'Arbitrary selection can never be justified by calling it classification.'"

To the same effect, requiring that a classification be reasonable in the light of its purpose, see *Carrington v. Rash,* 380 U.S. 89, 93, 13 L. Ed. 2d 675; *Rinaldi v. Yeager,* 384 U.S. 305, 309, 16 L. Ed. 2d 577; *Morey* v. *Doud,* 354 U.S. 457, 465, 1 L. Ed. 2d 1485; *Foster v. Mobile County Hosp. Board,* 5th cir., 398 Fed. 2d 227, 230.

There is no logical reason why the tax privileges should be withheld from the democratically operated golf courses.

The Court of Appeal feebly suggested that "the people could very well have believed that nonprofit golf courses faced financial difficulties, were more

likely to be converted to other uses than courses operated for profit, and for this reason needed special tax assistance to encourage their continued operation."

It is obvious that in fact the People had no such ridiculous beliefs. There was no evidence to this effect, no pleading or contention to that effect, no such issue in the case and it is contrary to common knowledge. The "non profit" golf courses are notoriously wealthy, while those open to the public are equally notoriously in bad financial circumstances.

But even if "the people" had in fact believed that the nonprofit discriminatory golf courses had such bad monetary problems, it would have had no weight whatever on the 14th Amendment.

The people of Maryland may very well all have believed that private school established for whites who disliked integrated schools were more likely to face financial difficulties than schools which accept all races. But in *Griffin v. School Board, supra,* it was specifically held that the State could not grant tax exemptions involving such schools.

Certainly a private golf course, which is by its very nature open only to high income groups, cannot logically claim comparison to private schools insofar as public benefit is concerned. We are in a World gone mad if tax privileges held forbidden to private schools are held acceptable when granted to racially segregated private golf courses, but withheld from democratically operated golf courses!

III.

THIS COURT HAS NEVER UPHELD STATE TAX ADVANTAGES TO RACIALLY DISCRIMINATING GOLF COURSES.

The Court of Appeal quotes isolated portions from three Supreme Court cases which it contends upholds the theory that state tax subsidization of racially and religiously bigoted golf courses is not state involvement. None of them do so.

First, the Court sets out a quotation from *United States v. Guest* (1966), 383 U.S. 745, 755, relative to the fact that the Fourteenth Amendment protects against State, not individual wrongs. It could not have chosen a case more adverse to its contentions. The *Guest* case applied the Equal Protection Clause to an indictment charging six private individuals with conspiring to deprive Negroes of the right to use state facilities without discrimination.

Immediately after the portion quoted by the Court of Appeal the Supreme Court made this very pertinent holding in *Guest*:

> "This is not to say, however, that the involvement of the State need to be either exclusive or direct. In a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of several cooperative forces leading to the constitutional violation. (Cases cited.)"

Among the cases in support of the statement in *Guest* that the participation of the state need only be "peripheral," or "one of several co-operative forces" were *Burton v. Wilmington Parking Authority, Griffin v. Maryland,* and *Robinson v. Florida,* all of which have been cited, *supra.* The *Guest* case was cited in *Seidenbourg v. McSorely's Old Ale House, Inc., supra,* as authority for the rule that the State's involvement need not be exclusive or direct.

The Court next cites *Bell v. Maryland,* 378 U.S. 226, another citation which upholds Appellants' rather than Respondent's contentions. In *Bell* the Supreme Court reversed a judgment convicting Negroes of sit-down strikes in a restaurant which refused to serve them. There is not a word in that case which even hints at support of a state tax subsidy of racially discriminating institutions. The Supreme Court specifically stated in *Bell* on page 288 of 378 U.S.:

> "Under our Constitution distinctions sanctioned by law between citizens because of race, ancestry, color or religion 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' (case cited) We make no racial distinctions between citizens in extracting from them the discharge of public responsibilities: The heaviest duties of citizenship — military service, taxation, obedience to laws — are imposed evenhandedly upon black and white."

The Court in *Bell* would indeed be surprised to

hear it argued that the heavy duty of taxation is really imposed "evenhandedly" upon black and white, Jew and Gentile, Anglo-Saxon and Mexican, where institutions that intentionally exclude non-Aryans have that heavy burden reduced to a mere fraction by the State!

The Court of Appeal's third and last case cited is *Walz v. New York City Tax Com.*, 397 U.S. 664, which *nowhere* involved the Fourteenth Amendment or any claim of discrimination. The *sole* issue there raised was whether the First Amendment, prohibiting establishment of religion, was violated by tax exemption of church property.

But, although the Equal Protection Clause was nowhere involved, the Court in *Walz* made this statement:

> "New York, in common with other states, * * * has not singled out one particular church or religious group or churches as such; rather it grants exemption to all houses of religious worship."

Suppose the exemption was only to Christian — or only to Jewish places of worship — suppose it specifically excluded Negro churches? Certainly both the First and Fourteenth Amendments would be held violated by such an abnormality.

It is strange philosophy indeed which equates racially and socially discriminatory golf clubs to a Church. The writer can go into any church, temple, mosque or other place of worship in town and attend

the services. If he wishes to become a Church member by conversion, he may do so. But he may not enter upon the sacred grounds of the Los Angeles Country Club without summary expulsion; and there is no possible means by which he can achieve membership in this sacred order. In these places of worship Goebbels would be the Messiah, George Wallace the high priest and the Klu Klux Klan the Vestal Virgins.

IV.

EVEN IF THE FAVORED GOLF COURSES WERE NOT OPERATED ON A BASIS OF RACIAL AND RELIGIOUS DISCRIMINATION, THE 14TH AMENDMENT WOULD BE VIOLATED BY THE TAX FAVORITISM INVOLVED.

Let us suppose that the tax-favored private clubs allowed all the supposedly inferior races and religions to enter on equal terms with the supposedly superior races and religions. These clubs would still impose the financial and social qualifications that would make them inaccessible to 99% of the taxpayers in the State. The golf players in California would still receive an illogical tax benefit not received by recreational facilities financially and socially available to all persons — and which do not take up thousands of acres of land so that just a wealthy few might enjoy the facilities. We would still have the State encouraged tax abnormality under which speculating promoters form

private golf courses, and then enjoy windfalls on the sale of the surrounding land.

We would still have a comparatively tiny group of high income club members obtaining tax subsidies paid by the sweat of every taxpayer, poor and rich alike.

The Court of Appeal decision cites *McGowan v. Maryland,* 366 U.S. 420 as authority for the statement that "Classification in Sunday closing law exemption proper if any *conceivable* facts could justify them" (emphasis added).

The Court in *McGowan* made no such ruling. Nowhere is it stated that a classification is proper merely if any conceivable facts could justify it. A *rational* basis is the pre-requisite.

What the Court actually did state in *McGowan,* and is set forth on page 426 of 366 U.S. Reports is: "A statutory discrimination will not be set aside if any state of acts *reasonably* may be conceived to justify it."

The Court of Appeal cites *Carmichael v. Southern Coal & Coke Co.* (1937), 301 U.S. 495, 81 L.Ed. 1245. But the *Carmichael* case also specifically restricts tax exemptions to those "having a rational basis." That alone disqualifies the wholly irrational basis here involved.

The very same Court that decided the *Carmichael* case, and at the very same session, decided the case of

Hartford S.B.I. & Ins. Co. v. Harrison (1937), 301 U.S. 459, 461-462, 91 L.Ed. 1223-1224, where the Supreme Court held:

> "It may be said generally that the equal protection clause means that the rights of all persons must rest under the same rule under similar circumstances, and that it applies to the exercise of all the powers of the state which can effect the individual or his property, including the power of taxation. It does not, however, forbid classification, and the power of the state to classify for purposes of wide range and flexibility, provided always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike.' (cases cited) That is to say mere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' (cases cited) *Discriminations of an unusual character especially careful consideration to determine whether they are obnoxious to the constitutional provisions.*" (emphasis is added.) The Supreme Court conclude in the *Hartford* case:
>
> "Despite the broad range of the State's discretion, it has limit which must be maintained if the constitutional safeguard is not to be overthrown. *Discriminations are not to be supported by mere fanciful conjecture.* (cases cited) *They*

cannot stand as reasonable if they offend the plain standards of common sense." (emphasis is added.).

If there ever was an arbitrary classification without any reasonable or just basis, of an unusual character, which offends "the plain standards of common sense," it is section 2.6, which makes struggling homeowners, businessmen, and farmers pay higher taxes because of the special favoritism shown to a comparatively small handful of comparatively well off country club members.

V.

THE DISCRIMINATION AGAINST GOLF COURSES NOT IN BUSINESS FOR TWO OR MORE YEARS IS IN ITSELF A FATAL VIOLATION OF THE 14TH AMENDMENT.

In *Mayflower Farms v. Ten Eyck*, 297 U.S. 266, 274, 80 L.Ed. 675, it was specifically held that the 14th Amendment was violated by a law which "was an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date." See also, *Morey v. Doud, supra*, 354 U.S. 457, 468, and *Accounting Corp. v. State Board*, 34 Cal. 2d 186, 190.

The Mayflower Farms rule was followed in California cases of *In Re Fassett*, 21 Cal. App. 2d 557 and *Soares v. City of Santa Maria*, 38 Cal. App. 2d 215, 217-218, where it was held that any law which places a greater tax burden on persons new to a business than

on persons already in business violates the 14th Amendment prohibition against discriminatory classification.

This rule is obviously applicable to the law here under attack, which withholds its privileges to golf courses not in business for at least two years.

The Court of Appeal referred to the *Mayflower Farms, Fassett* and *Soares* cases, and attempted to distinguish them by a novel argument without a thread of legal or rational precedence.

The Court held that the rule of the *Mayflower Farms, Fassett* and *Soares* cases did not apply to laws granting special rights to companies two years in business "where it was conceivable that such restriction would assure a degree of permanence of such courses and would tend to discourage the use of the section as a temporary tax advantage."

But the same fallacious argument could have been made in the *Mayflower Farms* cases, to-wit, that the favoritism shown to existing dairies "would assure a degree of permanence" of such dairies, and would "tend to discourage the use of the section" as a temporary advantage. And it could have been made in the *Fassett* and *Soares* cases relating to fees payable by hog ranch operators and solicitors, respectively, on the grounds that such exemptions "would assure a degree of permanency of such hog ranch and soliciting businesses, and would tend to discourage the use of the ordinances as temporary tax advantages."

In none of the above cases was such specious reasoning employed. The ruling in the above cause, in effect, attempts to disapprove the *Mayflower Farms* case, and the other cases following it, and throws this entire field of law into confusion.

The Court of Appeal raised the possibility that since petitioners did not seek to operate golf courses they might not have any standing to raise this point. But since it is not denied that Petitioners had standing to sue as taxpayers under both Federal and State law (*Flast v. Cohen,* 392 U.S. 83, 20 L. Ed. 947; *Knoff v. City of San Francisco,* 1 Cal. App. 3rd 184, 198, 81 Cal. Rptr. 683, S.C. hearing den.) in an action in aid of taxes, once they are in Court for one purpose, they are in Court for all purposes.

It is submitted that an unsupported repudiation of the *Mayflower Farms* case by the Court of Appeal is in itself sufficient to require granting of Certiorari.

VI.

THE 14TH AMENDMENT IS NOT BOUND BY A NON-EXISTING "PUBLIC POLICY" GRANTING SPECIAL TAX PRIVILEGES TO LAND SPECULATORS WHO HOLD PROPERTY OUT OF USE.

On page 7 of its decision the Court of Appeal asserted that section 2.6 was part of an "overall scheme" and "public policy" of encouraging speculators to hold land out of use. (The polite phrase used by the Court of Appeal was "discouraging premature development

of urban and near-urban land and encouraging the preservation of open spaces.")

No such "overall scheme" or "public policy" ever existed; and if it had existed it would certainly have no effect on the United States Constitution. Our Southern states have had well-settled State policies for a century relative to their racial problems, but they had no effect when they came into collision with the 14th Amendment. See for example, *Robinson v. Florida, supra,* 378 U.S. 153, 158, overthrowing regulations which "certainly embody a state policy" (encouraging segregation).

See also, *Levy v. Louisiana,* 391 U.S. 68, 71, holding:

> "(W)e have been extremely sensitive when it comes to basic civil rights (cases cited) and have not hesitated to strike down an invidious classification even though it had history and tradition on its side. (cases cited)"

In truth and in fact no such "public policy," history or tradition has ever existed.

At the time section 2.6 was passed the State public policy toward holding land out of use was set out in Article 17, Section 2 of the California Constitution which reads:

> "The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against public interest, and should be

discouraged by all means not consistent with the rights of private property."

Sections 1 and 3 of Article XVII also express our long-standing state policy in favor of small land holdings and against big speculative holdings.

Big speculators unsuccessfully tried to have Article XVII repealed in the 1968 and 1970 elections, the voters on each occasion retaining that Article by large margins. The truth of the public policy statement in Article XVII, Section 2, is evident. The traditional economic American policy has been to encourage *all* persons to hold land, as contrasted with the European, Asiatic and South American systems, where the greater part of the population has been more tenants on the holdings of a small handful of land barons. The value of that policy has been demonstrated and exemplified by the unmatched growth of our system of home ownership, by the strength of our industrial and agricultural economies, and by the independent political spirit of our citizens.

Years after the passage of section 2.6 certain special interests involved in the ownership of huge corporate farms obtained passage of Article XXVIII, Section I, the so-called "open space" amendment, under which the Irvine Estate, Kern County Land Co., and other huge corporate farms pay substantially lower taxes than small farmers. It is to the credit of Respondent Watson and almost every other assessor in California

that they opposed passage of the "open space" swindle, as they opposed the passage of the outrageous section 2.6 herein involved.

Although at least one court (*Boyne v. State,* 390 Pac. 2d 225) has held such "open space" legislation to be unconstiutionally discriminatory, its propriety is not before this court. It certainly cannot aid subsequently enacted legislation. And Article 28 did not restrict its favors to racially and religiously discriminatory ranches and farms.

But Article XXVIII, Section 1 is the exception rather than the rule. Article XVII still states the State policy. We may well be thankful California has no such perverted "public policy" as the Court of Appeal contends. And if such public policy *did* exist—the policy of favoring bigoted large landholders over small taxpayers, it could hardly survive the force of the United States Constitution.

VII.

THE 14TH AMENDMENT IS NOT AFFECTED BY THE FALSE AND FLAMBOYANT ARGUMENTS MADE BY THE MEASURE'S PROPONENTS.

The Court of Appeal adopted the novel and highly dangerous theory that the 14th Amendment must yield to what the voters might have "considered," "believed," "felt" or "thought" as the result of the flamboyant and highly irresponsible political campaign

made by the measure's sponsors. Considering the millions of dollars spent on fraudulent propaganda about dispelling smog and preventing pollution, the voters might well have considered, believed, felt, and thought that section 2.6 would bring world peace and everlasting life.

During the argument before the Court of Appeal, Petitioners argued that the 14th Amendment was not bound by what the voters might have imagined, that there was no uncertain or ambiguous language to interpret, and further that the campaign itself was an out-and-out swindle. The County Counsel argued otherwise, but the Presiding Justice of the Court of Appeal, the Honorable Otto Kaus, interrupted to state concerning the campaign:

"Of course it was a swindle! Blue skies!"

Yet Judge Kaus concurred with the Court's opinion that conclusions as to what the voters might have felt or considered binds the equal protection clause!

In fact, the voters of California could not have modified the meaning of the 14th Amendment to the United States Constitution even if they wanted to.

In addition the Court of Appeal completely disregarded settled California law that arguments to voters may *not* be utilized where there is no ambiguity or uncertainty in the language used. (*Helping Hand Home v. San Diego,* 26 Cal. App. 2d 452, 457; *Fay v. Dist. Court of Appeal* 200 Cal. 522, 536; *McGuire v. Went-*

worth, 120 Cal. App. 340, 344; *Cal. Tech v. Johnson,* 55 Cal. App. 2d 856, 859; *45 Cal. Jur.* 2d page 670.) In support of its claim that the Court could resort to ballot arguments even where no uncertainty or ambiguity existed the Court cited *Carter v. Com on Qualifications,* 14 Cal. 2d 179, 185-186, and *Ducey v. Dambacher,* 27 Cal. App. 2d 658, 661-662. In truth, neither of those cases supported the Court's statement. Both of them involved interpretations of ambiguous language. In *Carter,* the Court (page 185 of 14 Cal. 2d) referred to, and interpretation was placed on, "concededly vague and uncertain provisions of the Constitution." In *Dulcey,* on page 662 of 27 Cal. App. 2d the Court held that arguments made to voters "may be considered in determining the purpose and intent of an act and in construing its meaning."

In neither case was there even a hint to the effect that arguments to voters may control the 14th Amendment, or that arguments to voters may even be considered where no ambiguity or uncertainty existed in the language used.

The gigantic swindle perpetuated by the initiative's sponsors was described in the October 14, 1970 edition of the Los Angeles Times, the pertinent portion of which stated:

> "And then there was the promotion for a campaign of a few years ago with its catchy slogan 'K e e p California Green.' Conservation-minded voters approved the plan. But all it was was to give a property tax break to private golf courses."

The article concluded by quoting Judge Sumner, Chairman of the State Constitutional Revision Commission as stating:

> "There has to be more responsibility in the voters' pamphlet. It flies in the face of it to have false and misleading statements."

A true copy of that article is attached hereto, marked Appendix "A" and is incorporated herein by reference.

The mere fact voters may be deceived by what Judge Kâus referred to as a swindle does not mean that the Judiciary is bound thereby. Nor does it mean that the Court should disapprove the long line of cases holding that arguments to the voters may *not* be resorted to where there is no ambiguity or uncertainty in the language used.

VIII.

CONCLUSION

In *Parr v. Municipal Court,* 3 Cal. 3d. 861, 866, the California Supreme Court quoted Justice Stephen J. Field as stating: "We cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men."

It is a matter of public notoriety that racial and religious discrimination of the vilest type has existed

for years prior to enactment of section 2.6 and that it has no way lessened. We know that one golf club receiving the financial favors of section 2.6 is reported to be limited to 250 members, each of whom must have a net worth of over half a million dollars. We know that there are other favored clubs where even pure Anglo-Saxon blood, great financial resources and impeccable social graces are insufficient if the membership applicant does not come from one of the first families of the town.

But for the State subsidy these Un-American practices might have caused a change in policy to acceptance of all comers—the same practice as is utilized by non-favored golf courses which are assessed the same as every one else.

The practice here subsidized is so repugnant to enemies of bigotism and adherants of tax equality alike that it cannot long last. In an era where Hilterian theories of Aryan racial superiority have met judicial disapproval, it is political anachronism. In a period where the tax burden has become unbearable on unfavored homeowners and businessmen (including the unbigoted businessmen operating golf courses open to all customers) it is an economic abomination.

The section here under attack violates the letter, the spirit, the very heart of the 14th Amendment, in that it subsidizes and thus promotes bigotism and discrimination of the most insidious type.

It is submitted that this Honorable Court should

grant a Certiorari so that this matter of first instance may receive the benefit of the deliberations of the highest court in this country.

Respectfully submitted,

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